

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DARREN HARRIS, CASE NO. 1:05-cv-00003-AWI-SKO PC

Plaintiff, ORDER DENYING MOTION FOR RECONSIDERATION, WITH PREJUDICE

V.

(Doc. 116)

KIM, et al.,

Defendants.

Plaintiff Darren Harris, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 3, 2005. This action for damages is proceeding on Plaintiff's fourth amended complaint against Defendants Olivarria, Williams, and Kim for violation of the Eighth Amendment, and against Defendants Olivarria and Lowden for violation of the First Amendment. On March 15, 2013, Plaintiff filed a motion seeking reconsideration of the Magistrate Judge's order denying his motion for leave to amend. (Docs. 113, 116.)

Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from an order for any reason that justifies relief. Rule 60(b)(6) is to be used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances exist. *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (quotations marks and citation omitted). The moving party must demonstrate both injury and circumstances beyond his control. *Id.* (quotation marks and citation omitted). Further, Local Rule 230(j) requires, in relevant part, that Plaintiff show “what new or different facts or circumstances are claimed to exist which did not exist or were not

shown upon such prior motion, or what other grounds exist for the motion," and "why the facts or circumstances were not shown at the time of the prior motion."

“A motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law,” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted, and “[a] party seeking reconsideration must show more than a disagreement with the Court’s decision, and recapitulation . . . ” of that which was already considered by the Court in rendering its decision,” *U.S. v. Westlands Water Dist.*, 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001); see also *In re Pacific Far East Lines, Inc.*, 889 F.2d 242, 250 (9th Cir. 1989) (Rule 60(b)(6) may provide relief where parties were confronted with extraordinary circumstances but it does not provide a second chance for parties who made deliberate choices).

The Magistrate Judge’s order addressed Plaintiff’s arguments on the merits and correctly found that it would be futile to grant Plaintiff leave to amend to add the claims and parties he sought to add. *E.g., Woods v. City of San Diego*, 678 F.3d 1075, 1082 (9th Cir. 2012); *Silva v. Di Vittorio*, 658 F.3d 1090, 1105-06 (9th Cir. 2011); *Carrico v. City and County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011).

The Magistrate Judge did not err in denying Plaintiff's motion for leave to amend and his motion for reconsideration is HEREBY DENIED, with prejudice.

IT IS SO ORDERED.

Dated: March 19, 2013

SENIOR DISTRICT JUDGE